

IN THE CASE OF: ██████████

BOARD DATE: 2 May 2024

DOCKET NUMBER: AR20230011300

APPLICANT REQUESTS: upgrade of his under other than honorable conditions (UOTHC) characterization of service to honorable.

APPLICANT'S SUPPORTING DOCUMENT(S) CONSIDERED BY THE BOARD:

DD Form 149 (Application for Correction of Military Record)

FACTS:

1. The applicant did not file within the 3-year time frame provided in Title 10, U.S. Code (USC), Section 1552(b); however, the Army Board for Correction of Military Records (ABCMR) conducted a substantive review of this case and determined it is in the interest of justice to excuse the applicant's failure to timely file.
2. The applicant states he was too immature to be a Soldier. He admits there was no error in his discharge from the Army. However, he prays that he may receive relief from the Board.
3. The applicant enlisted in the Regular Army on 25 September 1959, for 3 years. The highest rank/grade he held was private first class/E-3.
4. Summary Court-Martial Order (SCMO) Number 89, issued by Headquarters, 2d Airborne Battle Group, 187th Infantry, Fort Campbell, KY on 8 October 1960, shows he was found guilty of being absent without leave from 3 October 1960 to 4 October 1960. He was sentenced to confinement at hard labor for 14 days, forfeiture of \$30.00 pay and reduction to private/E-1. The sentence was adjudged on 7 October 1960 and on 8 October 1960 approved and ordered duly executed.
5. SCMO Number 103, issued by Headquarters, 2d Airborne Battle Group, 187th Infantry, Fort Campbell, KY on 1 December 1960, shows he was found guilty of failing to go at the time prescribed to his appointed place of duty, on or about 21 November 1960. He was sentenced to confinement at hard labor for 15 days, forfeiture of \$55.00 pay, and reduction to E-1. The sentence was adjudged on 29 November 1960 and on 1 December 1960 approved and ordered duly executed.

6. Special Court Martial Order (SPCMO) Number 89, issued by Headquarters, 2d Airborne Battle Group, 187th Infantry, Fort Campbell, KY on 16 September 1961, shows the applicant pled guilty to and was found guilty of absencing himself from his unit, on or about 24 July 1961 and did remain so absent until on or about 8 August 1961. He was sentenced to confinement at hard labor for six months, forfeiture of \$55.00 pay per month for six months, and reduction to E-1. The sentence was adjudged on 11 September 1961 and on 16 September 1961 was approved and ordered duly executed.
7. SPCMO Number 121, issued by Headquarters, 2d Airborne Battle Group, 187th Infantry, Fort Campbell, KY on 1 December 1961, shows the unexecuted portion of the sentence to confinement at hard labor for six months was remitted.
8. The complete facts and circumstances surrounding his discharge are not available for review. However, his record contains a DD Form 214 (Armed Forces of the United States Report of Transfer or Discharge) that shows the following:
 - a. On 6 December 1961, the applicant was discharged under the provisions of Army Regulation 635-208 (Personnel Separations-Discharge-Unfitness) with Separation Program Number (SPN) 28B by reason of unfitness, with an UOTHC characterization of service in the grade of E-1.
 - b. He completed 1 year, 10 month, and 27 days of active service during the period covered.
 - c. Block 32 (Remarks) shows 105 days of lost time from 3 October 1960 thru 3 October 1960, 24 July 1961 thru 15 August 1961, and from 11 September 1961 thru 30 November 1961.
9. The applicant petitioned the Army Discharge Review Board (ADRB) for upgrade of his service characterization. On 28 December 1967, after careful consideration the ADRB determined he was properly and equitably discharged.
10. Regulatory guidance in effect at the time provided an undesirable discharge was normally considered appropriate for Soldier's discharged under the provisions of Army Regulation 635-208, by reason of unfitness.
11. The Board should consider the applicant's argument and evidence, along with the overall record, in accordance with the published equity, injustice, or clemency determination guidance.

BOARD DISCUSSION:

The Board carefully considered the applicant's request, evidence in the records, and published Department of Defense guidance for consideration of discharge upgrade requests. The Board considered the applicant's statement, his record of service, the frequency and nature of his misconduct, the reason for his separation and whether to apply clemency. The Board found insufficient evidence of in-service mitigating factors and the applicant provided no evidence of post-service achievements or letters of reference in support of a clemency determination. Based on a preponderance of the evidence, the Board determined the character of service the applicant received upon separation was not in error or unjust.

BOARD VOTE:

Mbr 1 Mbr 2 Mbr 3

:	:	:	GRANT FULL RELIEF
:	:	:	GRANT PARTIAL RELIEF
:	:	:	GRANT FORMAL HEARING
■	■	■	DENY APPLICATION

BOARD DETERMINATION/RECOMMENDATION:

The evidence presented does not demonstrate the existence of a probable error or injustice. Therefore, the Board determined the overall merits of this case are insufficient as a basis for correction of the records of the individual concerned.

9/16/2024

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CHAIRPERSON

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I certify that herein is recorded the true and complete record of the proceedings of the Army Board for Correction of Military Records in this case.

REFERENCES:

1. Title 10, USC, Section 1552(b), provides that applications for correction of military records must be filed within 3 years after discovery of the alleged error or injustice. This provision of law also allows the ABCMR to excuse an applicant's failure to timely file within the 3-year statute of limitations if the ABCMR determines it would be in the interest of justice to do so.

2. Army Regulation 635-200 (Personnel Separations – General Provisions for Discharge and Release), then in effect, provided the criteria governing the issuance of honorable, general, and undesirable discharge certificates.

a. An honorable discharge was a separation with honor and entitled the recipient to benefits provided by law. The honorable characterization was appropriate when the quality of the member's service generally met the standards of acceptable conduct and performance of duty for Army personnel or was otherwise so meritorious that any other characterization would be clearly inappropriate.

b. A general discharge was a separation from the Army under honorable conditions. When authorized, it was issued to a Soldier whose military record was satisfactory but not sufficiently meritorious to warrant an honorable discharge.

3. Army Regulation 635-208, in effect at the time, set forth the policy for administrative separation for unfitness. Paragraph 3 provided that individuals would be discharged by reason of unfitness when their records were characterized by one or more of the following: (a) frequent incidents of a discreditable nature with civil or military authorities, (b) sexual perversion, (c) drug addiction, (d) an established pattern of shirking, and/or (e) an established pattern showing dishonorable failure to pay just debts. This regulation prescribed that an undesirable discharge was normally issued unless the particular circumstances warranted a general or honorable discharge.

4. On 25 July 2018, the Under Secretary of Defense for Personnel and Readiness issued guidance to Military Discharge Review Boards and Boards for Correction of Military/Naval Records (BCM/NR) regarding equity, injustice, or clemency determinations. Clemency generally refers to relief specifically granted from a criminal sentence. BCM/NRs may grant clemency regardless of the type of court-martial. However, the guidance applies to more than clemency from a sentencing in a court-martial; it also applies to other corrections, including changes in a discharge, which may be warranted based on equity or relief from injustice.

a. This guidance does not mandate relief but provides standards and principles to guide Boards in application of their equitable relief authority. In determining whether to grant relief on the basis of equity, injustice, or clemency grounds, BCM/NRs shall

consider the prospect for rehabilitation, external evidence, sworn testimony, policy changes, relative severity of misconduct, mental and behavioral health conditions, official governmental acknowledgement that a relevant error or injustice was committed, and uniformity of punishment.

b. Changes to the narrative reason for discharge and/or an upgraded character of service granted solely on equity, injustice, or clemency grounds normally should not result in separation pay, retroactive promotions, and payment of past medical expenses or similar benefits that might have been received if the original discharge had been for the revised reason or had the upgraded service characterization.

//NOTHING FOLLOWS//